



November 9, 2000

Mr. John R. Allen  
Chief of Police  
Alvarado Police Department  
104 West College  
Alvarado, Texas 76009

OR2000-4370

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 140526.

The Alvarado Police Department (the "department") received a request for "any and all reports" pertaining to Clifford Brockway dating from January 1995 to the present date. In addition, the requestor asks for "employee, training, and personnel records pertaining to Detective Josh Vincent and Chief John Allan [sic]." You claim the information is excepted from disclosure pursuant to sections 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.301(e)(1), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (A) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (B) a copy of the written request for information, (C) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (D) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office within fifteen business days written comments stating the reasons why the exceptions that you raised would allow the information to be withheld. In addition, you have failed to timely submit the information responsive to the request. Although you have submitted a signed statement that states that the department received the request on August 18, 2000, other correspondence from the department indicates that the department also received the request by facsimile on August 16, 2000. As a result, the department's fifteen day deadline for submitting the information required under 552.301(e) was September 7, 2000. Thus, you have failed to comply with section 552.301(e).

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Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The need of a governmental body, other than the body that is seeking an open records decision, to withhold information under section 552.108 of the Government Code may be a compelling reason for non-disclosure. Open Records Decision No. 586 (1991). Section 552.108 excepts from disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Gov't Code § 552.108(a). In this instance, the Prosecutor Assistance Division of the Office of the Attorney General has advised that the disclosure of information concerning the department's investigation into the death of January Brockway would interfere with the prosecution of a pending criminal case. You have submitted a representative sample of information.<sup>1</sup> Therefore, you may withhold most of the requested information pursuant to section 552.108(a)(1).<sup>2</sup>

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Thus, you must release the types of basic information listed in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>Because section 552.108 is dispositive, we do not address your section 552.103 claim other than to note that, generally, basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 362 (1983).

Moreover, the investigation records include an autopsy report, which is public by statute. Section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. Pursuant to section 11, the autopsy report is a public record and must be released to the requestor.

A compelling interest also exists if some other source of law makes the information confidential or third party interests are at stake. *See* Open Records Decision No. 150 (1977). Your assertion that some of the personnel information is excepted by section 552.117 of the Government Code provides such a compelling interest. In addition, the disclosure of the responsive information would implicate third party interests. Therefore, a compelling interest exists to overcome the presumption of openness for the personnel information that you wish to withhold.

In relevant part, section 552.117 provides as follows:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

- (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024[.]

Gov't Code § 552.117(2). You state that both individuals named in the request are peace officers as defined by article 2.12 of the Code of Criminal Procedure. Thus, prior to releasing the remaining personnel information, section 552.117(2) requires you to withhold the home

address, home telephone number, social security number, and information about family members. An employee's date of birth is not information that is excepted under section 552.117(2) and must be released. For your reference, we have marked the relevant information that must be redacted.<sup>3</sup>

In addition, we note that the submitted information contains Texas drivers' license numbers. Subsection 552.130(a)(1) of the Government Code excepts from public disclosure information relating to a driver's license issued by an agency of this state. Therefore, you must withhold the drivers' license numbers under section 552.130.

The submitted personnel information also contains information that is confidential under section 552.101 of the Government Code in conjunction with common law privacy. Under common law privacy, private facts about an individual are excepted from disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Additionally, this office has found that information regarding some kinds of medical information or information indicating disabilities or specific illnesses is also excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). For your reference, we have marked the information at issue which must be withheld under section 552.101.

The submitted information contains employee W-4 forms. Employee W-4 forms are excepted from disclosure by section 6103(a) of title 26 of the United States Code. Open Records Decision No. 600 (1992).

In summary, the homicide investigation records may be withheld under section 552.108(a)(1) after the release of basic information. Portions of the personnel information must be withheld under sections 552.101 and 552.117. You must also withhold the Texas drivers' license numbers under section 552.130. The employee W-4 forms must be withheld under section 6103(a) of title 26 of the United States Code. Lastly, you must release the autopsy report, which is public by statute.

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<sup>3</sup>Please note that we disagree with your markings in the redacted version of the information as submitted by your office. Therefore, please refer to the information as marked by this office.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

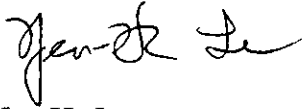
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/er

Ref: ID# 140526

Encl. Marked documents

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